

**Department of Personnel Administration
Memorandum**

TO: Personnel Management Liaisons (PML)

SUBJECT: Supreme Court Decision Impacting Post and Bid Provisions	REFERENCE NUMBER: 2005-030
DATE ISSUED: 09-09-05	SUPERSEDES:

This memorandum should be forwarded to:

**Personnel Officers
Labor Relations Officers**

FROM: Department of Personnel Administration
Labor Relations Division

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The purpose of this PML is to provide guidance to departments related to the recent Supreme Court decision (<http://www.courtinfo.ca.gov/opinions/documents/S122058.DOC>), filed July 29, 2005, regarding the provisions of "post and bid."

Based on a review of the "post and bid" pilot programs negotiated in the 2002 collective bargaining agreements (MOUs) for Bargaining Units (BU) 1, 4, and 11 by Department of Personnel Administration (DPA) and California State Employees Association (CSEA), the Supreme Court issued a decision that "post and bid" is unconstitutional, and violates the merit principle. The Supreme Court determined that the Constitution mandates permanent appointments and promotions, in the civil service, be based solely on merit.

As a result of this decision, DPA is providing guidance to departments on areas of the contracts that have post and bid provisions. The guidelines include contract provisions that are now prohibited or expired, those that remain intact, and those provisions which need to be clarified. A variety of post and bid provisions exist in the following MOUs: 1, 4, 6, 7, 8, 11, 12, 13, 15, 17, 18, and 20.

Post and Bid Provisions Prohibited

The following post and bid provisions are prohibited based on the Supreme Court decision:

1. The "post and bid concept" commonly known as "post and promote," in the 2002 MOUs for BUs 1, 4, and 11 (expiration date July 2, 2003).
2. Any post and bid process allowing bidding for positions involving movement between appointing powers.
3. Any post and bid process allowing bidding for positions involving a change in classification.

Post and Bid Provisions Not Impacted (Attachment A)

DPA has determined that the Supreme Court decision *does not* impact post and bid processes involving areas other than appointments and promotions. The processes regarding these areas will continue as outlined in the applicable MOUs. The post and bid process, based on seniority, is valid for:

1. Work shifts; work schedules; or days off.
2. Overtime.
3. Job assignments and work unit changes as delineated in existing contract provisions (see attached).

While not true post and bid provisions, many MOUs have provisions addressing "Employee Opportunity Transfer" that allow seniority based considerations. DPA's assessment is that these provisions are not impacted by the recent decision. In addition, DPA has determined the Supreme Court decision does not impact existing statutes that address seniority considerations. Examples include the layoff process and involuntary transfers.

Post and Bid Provisions Pending Clarification (Attachment B)

DPA is in the process of requesting an interpretation from the State Personnel Board regarding the impact of the Supreme Court's decision on the use of the post and bid process regarding all appointments. Because transfers (transaction code A02) are generally considered "appointments," further clarification is required.

In part, the court decision stated words to the effect that the post and bid process may not be used to circumvent the constitutional mandate that permanent appointments (e.g., transfers) be based solely on merit. The decision implies appointing powers are required to consider a broader and more meaningful range of merit-based criteria to select the most qualified applicant for an individual position. The sole use of seniority does not meet these criteria.

Therefore, the Supreme Court decision may impact post and bid processes which are based solely on seniority:

1. Transfers between positions involving the same civil service class, but different work sites, unit changes (e.g., requiring a personnel transaction), or geographic locations.
2. Transfers between positions within classes that are used in a variety of settings and require differing knowledge and/or skill sets. For example, the Staff Services Analyst classification is used very differently by numerous departments and in different disciplines (e.g., personnel, budgeting, management analysis, etc.)
3. Conversions in time base from permanent intermittent to permanent full time.

It is important to note that the existing contract provisions, which are pending clarification regarding the impact of the Supreme Court decision, remain status quo at this time. The contract provisions should continue to be applied, until such time as DPA directs departments to make any changes in the practice of applying these provisions.

Please note that the 2003-2005 "Pilot Post and Bid Program" for Units 1 and 4 expired with the term of the MOUs, as of June 30, 2005. These post and bid provisions of those contracts are no longer applicable, and would not have been even without the Supreme Court decision.

When additional clarification is available, DPA will provide an updated memorandum on the impact of the Supreme Court decision on the post and bid provisions within the MOUs.

/s/David A. Gilb

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